IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 20391 of 2005

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Dated: 26th October 2005.

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Between:

The Plant Protection Advisor to Government of India and others

..... PETITIONERS

AND

Dr. Mrs. Chandi Ray

.....RESPONDENT

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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W.P.NO.20391 OF 2005

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

Aggrieved by an order in O.A.No.1438 of 2003 dated 7th March 2005 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, the respondents therein preferred the present writ petition with the prayer as follows:

> "For the reasons stated accompanying affidavit the Hon'ble Court may be pleased issue a writ in the nature of certiorari or any appropriate writ, order or direction, calling for the records pertaining to Order dt.07-03-2005 in OA No.1438 of 2003 on the file of Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad, and quash the same or pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

The respondent herein was an employee of the petitioners from 1978 and took voluntary retirement with effect from 3rd August 2002. Complaining that though she is entitled for payment of Pension, Gratuity and other retirement benefits including the General Provident Fund etc., she filed the abovementioned O.A. before the Central Administrative Tribunal. The case of the petitioners is that in two spells the respondent was absent from duty without any appropriate sanction of leave and therefore, they could not immediately finalize the issue of retirement benefits of the respondent. The Tribunal recorded a categoric finding that except calling for an explanation with regard to the unauthorized absence, no further disciplinary action was initiated against the respondent herein while she was in service and therefore, there was no reason to withhold the payment of the retirement benefits to her. As a consequence, the petitioners are not only directed to pay the retirement benefits but also interest on the said amount calculated at 12 per cent per annum from the date of the entitlement to the date of actual payment.

We do not find any error or jurisdiction or illegality in the impugned order. If the respondent was unauthorisedly absent from service, the petitioner were entitled to take action in accordance with law for such unauthorized absence, if they so choose, however, the petitioners never thought it fit to take any disciplinary action in that regard. In the absence of any disciplinary action, it can only be inferred that the petitioners condoned the lapse, a matter, which is exclusively within the discretion of the employer. Having condoned the lapse, the petitioners could not have withheld the retirement benefits of the respondent, without any proper explanation in that regard.

We do not see any merit in the writ petition and the same is accordingly dismissed at the stage of admission. No costs.

J.Chelameswar, J

RAMESH RANGANATHAN, J

26th October 2005

mrk